

REMARKS/ARGUMENTS

Status:

In the Office Action dated November 27, 2007, claims 1-18 were restricted, and election was made by the Applicant via telephone consultation with the examiner to elect claims 1-7 and claims 12-18. Claims 8-11 are withdrawn from consideration, and are indicated as such in the amendment provided herein.

Claim 2 was objected to for reciting "the a billing system" and appropriate correction has been made by the applicant.

Claims 1-5, 7, and 12-18 were rejected under 35 U.S.C. 103(a) as being obvious over Marsh (2001/0037269) in view of Boardman et al. (U.S. Patent 6,456,986).

Claims 12-18 were rejected as under 35 U.S.C. 103(a) as being unpatentable over Boardman in view of Marsh.

Claim 6 was rejected under 35 U.S.C. 103(a) as being obvious over Marsh in view of Boardman and further in view of Alfvén (U.S. Patent No. 7,231,367).

Discussion

Applicant has amended the claims to narrow the scope, and consequently addressing each of the rejections in light of the prior art is not necessary. The present claims recite, in part, a "digital distribution and delivery system comprising a hybrid fiber coax network," of which one embodiment is a cable system. Applicant notes that this is distinct from the system disclosed in Marsh, which pertained to a wireless communication service and does not disclose a "hybrid fiber coax network."

More importantly, Marsh is distinct from the present invention because Marsh pertains to analyzing wireless records pertaining to telephone calls, and determining whether the best service plan is being used for that subscriber (Marsh, Abstract, par. 65). Thus, Marsh

presumably analyzes call records (time of day, originating location, toll calls, see *e.g.*, par. 72) to determine a cost according to the user's rate plan, and then analyzing the same events using a second rate plan, to recommend whether the user should change their current rate plan.

Marsh is inapplicable to the amended claims for various reasons. First, it is clear that the system in Marsh does not involve a "hybrid fiber coax network" nor does it involve a "set top box" connected to the hybrid fiber coax network.

Second, the events in Marsh do not correspond to a "purchase request" as described in the present invention and in independent claims 1 and 12. Users in a wireless network do not negotiate or explicitly request "purchasing" a call on a call-by-call basis. Rather, when a call is placed in a wireless environment, authorization for using the service has been previously made to the user, and charges are simply accrued. At most, all service requests may be denied if the account is made inactive.

Third, Marsh pertains to comparing total bills for a wireless subscriber using different rate plans. The present invention pertains to determining a bill for a subscriber, and there is no claim recitation of using multiple rate plans to compute the total bill for a subscriber. Thus, the present invention pertains to how to compute a bill for a subscriber, and Marsh's disclosure of whether the total bill could be lower or higher on a separate rate plan is inapplicable.

Fourth, the amended claims include aspects of provisioning the purchased service offering for the subscriber (see, *e.g.*, "a network controller..." as recited in independent claims 1 and 12) which is not disclosed by Marsh. Marsh does not disclose how to provision a service, but focuses on comparing the cost of the services under different rate plans.

Similarly, the Boardman reference is inapplicable to the present claims, as it discloses, for example in Figure 4, a *single rating engine* (Boardman, "A rating and summarization engine of the invention..." (col. 4, lines 58-60); "A Rater and Summarizer 80 is responsible for all real-time rating and the accumulation of the Event information for end of bill period rating and pricing." (col. 5, lines 2-5.)). Thus, Boardman discloses a single monolithic engine that computes all aspects of the bill. This is in contrast to the present invention, where a service

offering (which is recited as *distinct* from the billing system) includes the price algorithm (see, e.g., par. 9). This aspect is reflected in the claims that recite a “billing system” and which is distinct from a “service application program” which comprises “a price algorithm” (see e.g., claim 1 and 12). Thus, Boardman’s disclosure of a billing system with a price algorithm teaches against the recited claims, where the pricing algorithm is *not in the billing system*, but associated with the service application program.

Further, it is clear that the “network controller” as recited in the claims herein is not disclosed by Boardman. The ratings engine in Boardman does not provision any services for a set top box connected to a hybrid fiber coax network. Indeed, the claim limitations “set top box” and “hybrid fiber coax network” are not even recited in the disclosure of Boardman.

Finally, the Alfvén reference also appears inapplicable, as the section referred to by the Examiner discloses a users uploading digital image information from a camera *to* a telecommunications provider, including the cryptic statement that a set top box could be used (col. 3, lines 55-60.) Regardless of how a set top box could be used in Alfvén by a user to transmit pictures to a telecommunications provider, it appears to have little applicability with the present claims, where the network controller provisions a service for a subscriber associated with a set top box. Typically, where the subscriber is purchasing a service, this results in information being sent from the cable services provider to the set top box (as opposed to Alfvén’s disclosure of sending information from the set top box).

Applicant submits that with the claim amendments provided herein, the scope of the claims are narrowed such that the claims are patently distinct over the prior art of record, and that it is appropriate to withdraw the rejections.

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Amdt. dated April 28, 2008
Reply to Office Action of November 27, 2007

CONCLUSION

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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